

ESTTA Tracking number: **ESTTA211144**

Filing date: **05/13/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049029
Party	Defendant Review Publishing Limited Partnership
Correspondence Address	Glenn A. Gundersen DECHERT LLP Cira Centre, 2929 Arch Street Philadelphia, PA 19104 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Jacob Bishop
Filer's e-mail	trademarks@dechert.com, erik.bertin@dechert.com, jacob.bishop@dechert.com
Signature	/Jacob Bishop/
Date	05/13/2008
Attachments	TASTE OF SOUTH JERSEY bertin declaration.pdf (25 pages)(1117209 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DAVID. J. LONG, JR.

Petitioner,

v.

REVIEW PUBLISHING
LIMITED PARTNERSHIP

Registrant.

:
:
:
:
:
:
:
:
:
:
:

Cancellation No. 92/049,029

DECLARATION OF ERIK BERTIN

I, Erik Bertin, declare and state as follows:

I am an attorney with the law firm of Dechert LLP, counsel of record for Registrant Review Publishing Limited Partnership. I make this Declaration in support of Registrant's Reply Brief, which was filed in this proceeding on May 13, 2008. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto:

1. The cancellation petition filed in this proceeding indicates that the Petitioner's email addresses are pr@foodpresswire.com and editor@homeandtowne.com (referred to herein as "Petitioner's email addresses").

2. Glenn A. Gundersen is counsel of record for Registrant. Mr. Gundersen's email address is glenn.gundersen@dechert.com.

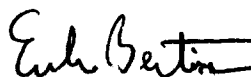
3. Hal Borden is counsel of record for Registrant. Mr. Borden's email address is hal.borden@dechert.com.

4. On May 13, 2008 I instructed our firm's information technology department to run a search of the firm's email system for messages sent to or received from Petitioner's email

addresses between February 1, 2008 and May 13, 2008. Attached hereto as Exhibit A is a true and correct copy of a report showing the results of that search. The report indicates that a message was sent from pr@foodpresswire.com to Mr. Gundersen's email address on March 18, 2008 at 4:38 p.m. and on March 19, 2008 at 9:16 a.m. True and correct copies of these email messages are attached hereto as Exhibit B and Exhibit C. The report confirms that Mr. Gundersen or Mr. Borden did not receive any other emails from Petitioner's email between February 1, 2008 and May 13, 2008, and that Mr. Gundersen or Mr. Borden did not send any emails to Petitioner's email addresses during the same time period.

5. Attached hereto as Exhibit D are true and correct copies of print-outs from the U.S. Postal Services' online tracking system for U.S. Postal Service Track & Confirm Receipt Numbers (a) 7006 0810 0005 3405 9705, (b) 7006 0810 005 3405 9729; and (c) 7007 1490 0004 8506 4267.

Respectfully submitted,



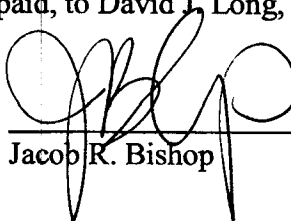
Attorneys for Registrant
REVIEW PUBLISHING
LIMITED PARTNERSHIP

Erik Bertin
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
(215) 994-2183

Dated: May 13, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Declaration of Erik Bertin has been duly served by mailing such copy first class, postage prepaid, to David I. Long, Jr., 2050 Delsea Drive, Sewell, NJ 08080 on May 13, 2008.



Jacob R. Bishop

Exhibit A

Bertin, Erik

From: Washklovitch, Joseph
Sent: Tuesday, May 13, 2008 2:00 PM
To: Bertin, Erik
Subject: Search results information

Attachments: TASTE OF SOUTH JERSEY Email Search Results.doc

Erik,

Attached is a step by step document on how we retrieved the emails forwarded to you.



TASTE OF SOUTH
JERSEY Email Se...

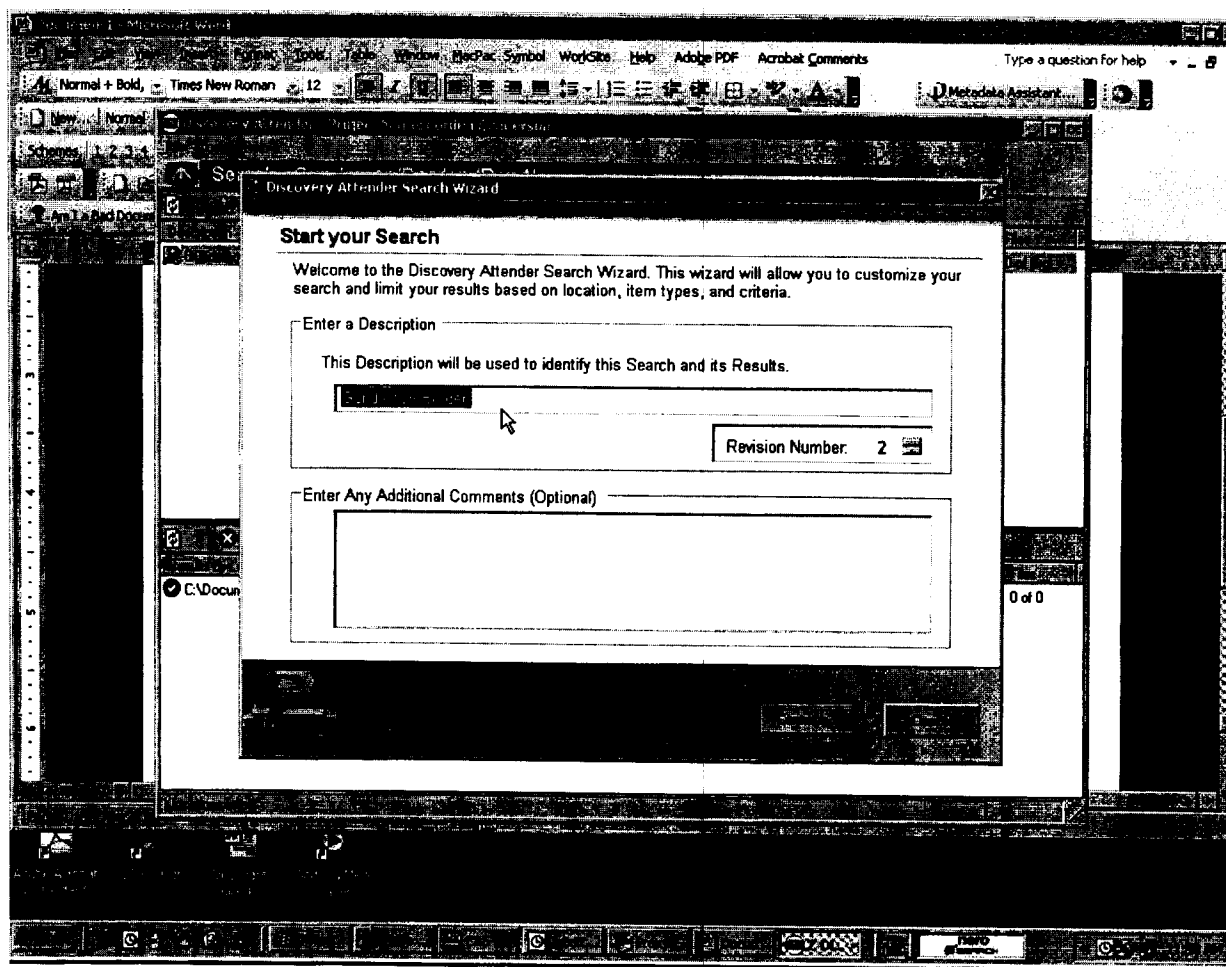
Thank you,

Joseph Washklovitch
Support Specialist
Dechert LLP
Philadelphia, PA 19103-2793
Direct: +1.215.994.7276
Mobile: +1.215.869.7280
Fax: +1.215.994.2222
joseph.washklovitch@dechert.com

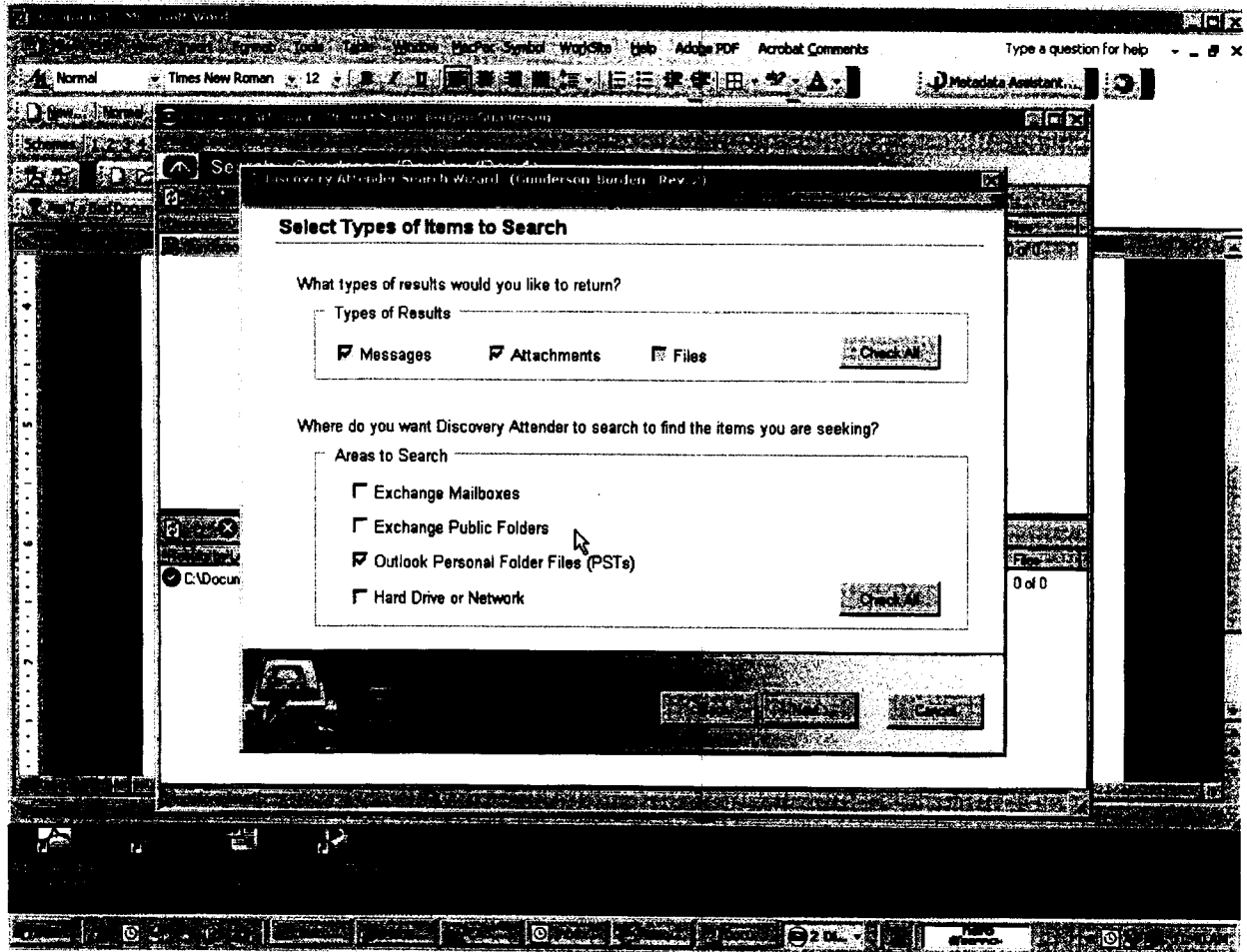
Email Search

First we restored all EAS mail messages sent or received by Glenn Gundersen or Hal Borden between February 1, 2008 and May 13, 2008. These emails were put into a PST where we run a search with a program called "Discovery Attender". Below are the screen shots on how we did the search.

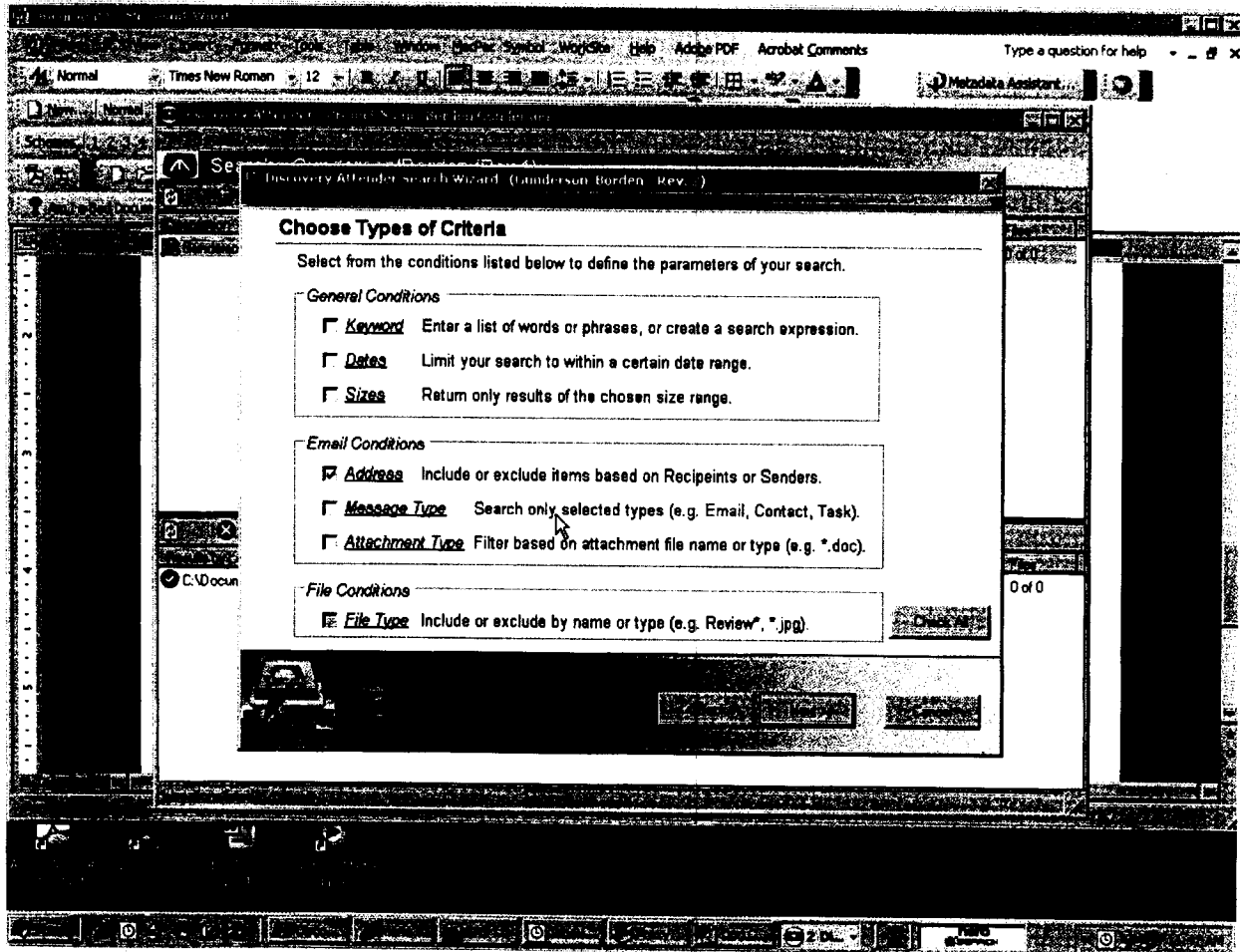
Discovery Attender



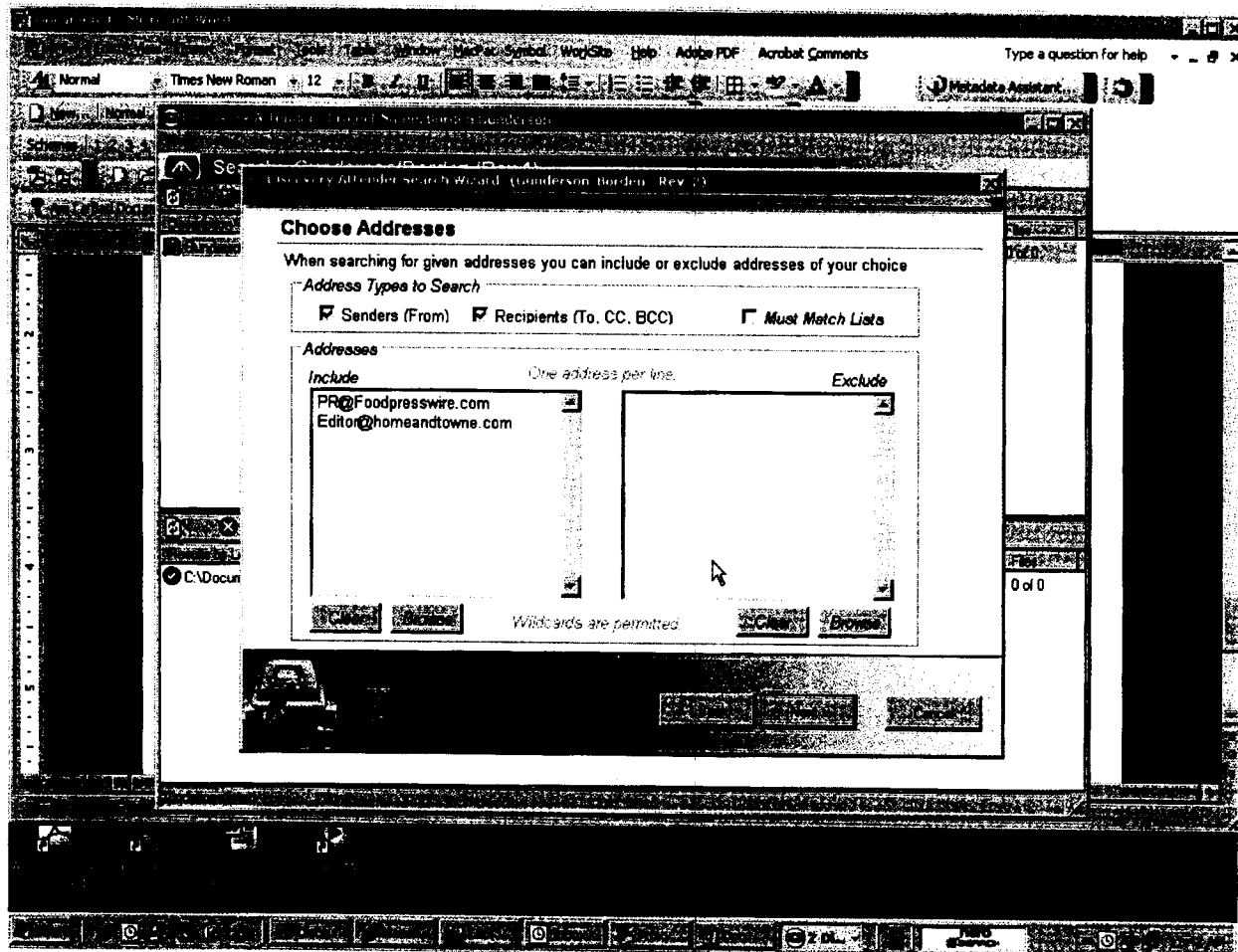
First we create the project and give it a name.



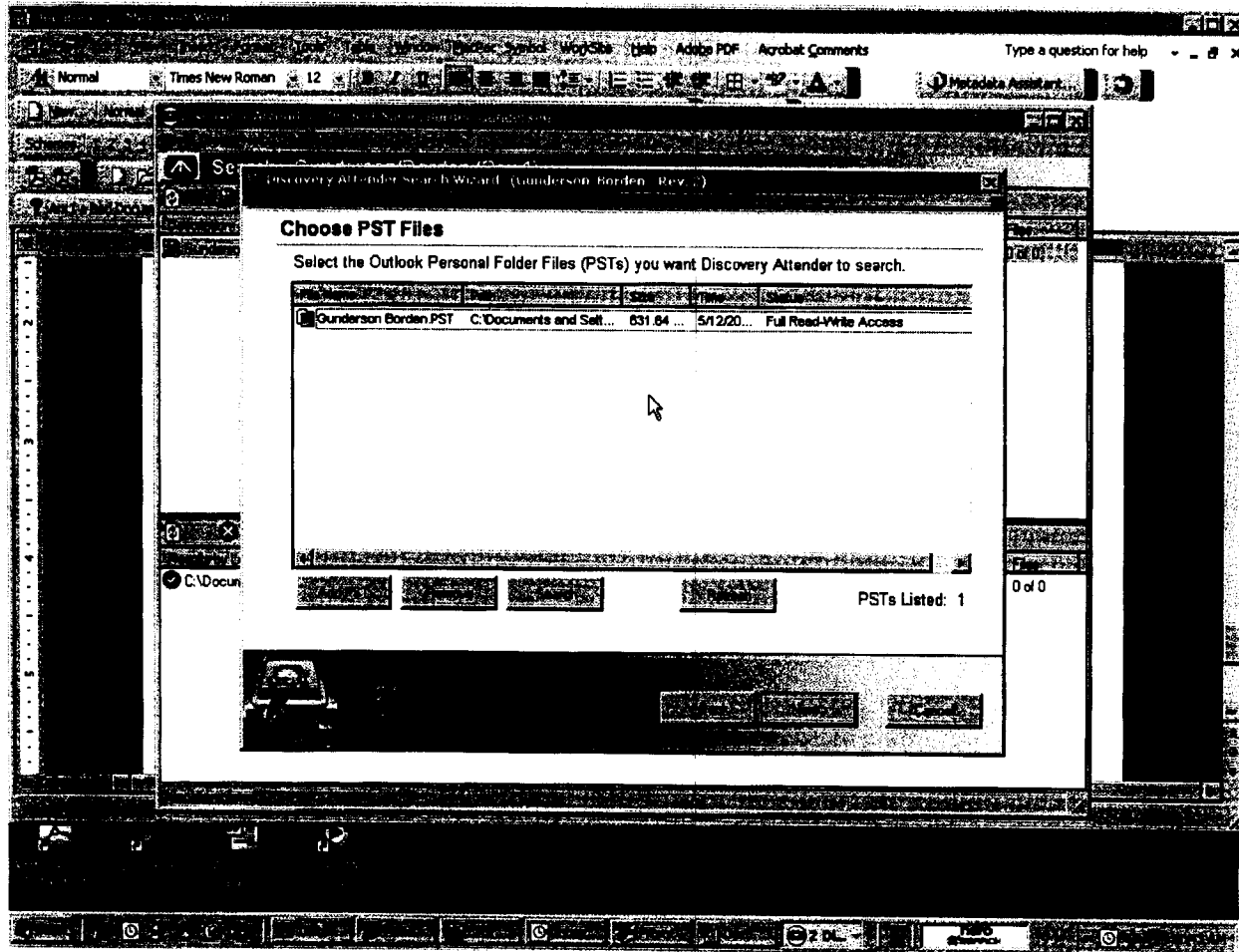
Next we select the areas to search. In this case it was a PST file.



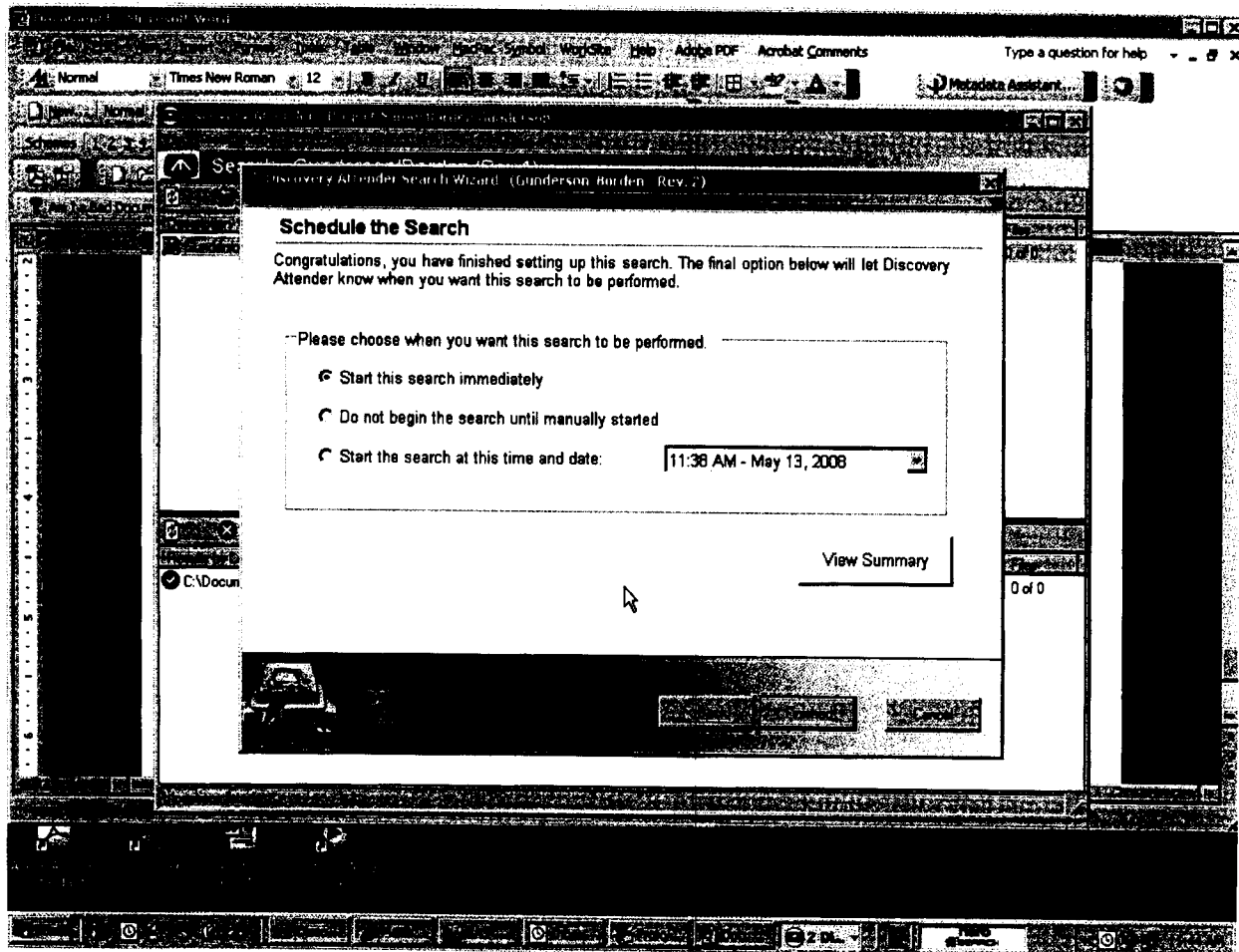
Choose criteria. In this case it was email Address.



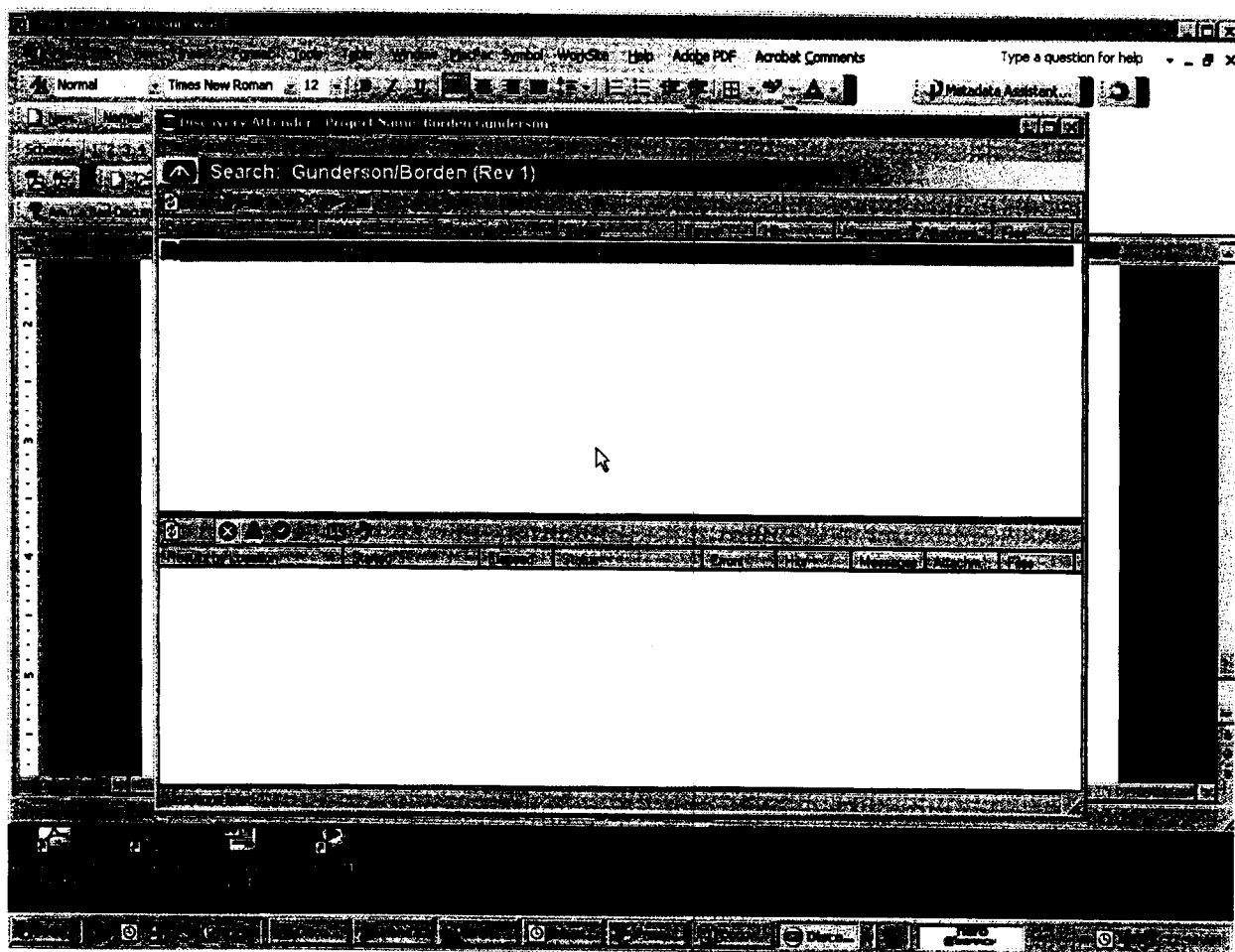
Type in "keywords" or "addresses" to search for with in the PST files. The email addresses that we searched for were pr@foodpresswire.com and editor@homeandtowne.com



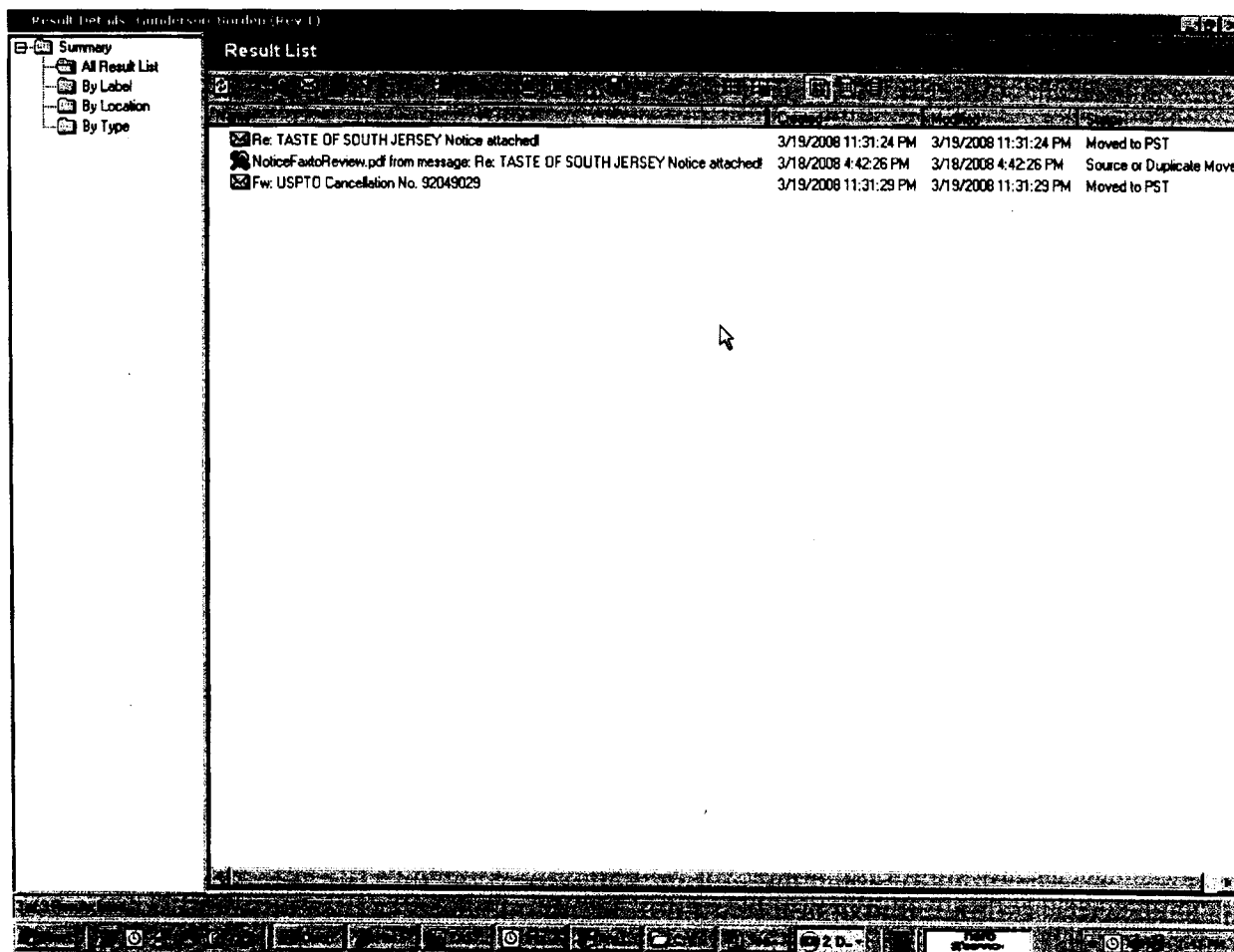
Select PST file to search.



Begin search



When completed the program will show the results.



When viewing the results it will show any emails and attachments from the results. The results indicate that Glenn Gundersen received two emails from pr@foodpressure.com. The first email message was received on March 18, 2008. A two-page document was attached to this message. This message was backed-up on our system on March 18, 2008 at 11:31 p.m. The second email message was received on March 19, 2008. This message was backed-up on our system on March 19, 2008 at 11:31 p.m. Glenn Gundersen has not sent or received any other messages to or from pr@foodpresswire.com or editor@homeandtowne.com. Hal Borden has not sent or received any messages to or from pr@foodpresswire.com or editor@homeandtowne.com.

Exhibit B

Bertin, Erik

From: FOOD PRESS WIRE [pr@foodpresswire.com]
Sent: Tuesday, March 18, 2008 4:38 PM
To: aclifton@reviewpublishing.com
Cc: gmonte@reviewpublishing.com; jstokes@reviewpublishing.com; Gundersen, Glenn
Subject: Re: TASTE OF SOUTH JERSEY Notice attached!
Attachments: NoticeFaxtoReview.pdf

To All Parties:

This email and attachments serve as a secondary notice to the fax your offices received today, March 18, 2008.

David J. Long Jr.,

T/A: TASTE OF SOUTH JERSEY

First used in commerce and a registered business name since 1999.

FAX COVER LETTER

To: Review Publishing Limited Partnership
and Canton Associates, L.P.

Anthony A. Clifton, president
Jim Stokes, vice president
Ginger Monte, controller

From: David J. Long Jr.,
TASTE OF SOUTH JERSEY

Date: March 13, 2008

Re: Petition to Cancel Trademark Registration

Page 1 of 2

To Whom it May Concern:

This fax is to serve as notice that I have filed a petition to cancel the registration of trademark registration number 2969604 on the following grounds.

1. First use of the name in commerce
2. Unfair business practices
3. Passing Off
4. Misrepresentation
5. Dilution of my business reputation, company, goods and services
6. And any other applicable statements, rights and future proceedings

Delivered by fax this day, March 13, 2008.

By: David J. Long Jr.
PO 215
Sewell, NJ 08080
856.232.2299

cc: GLENN A. GUNDERSEN, DECHERT LLP
4000 BELL ATLANTIC TOWER
1717 ARCH STREET
PHILADELPHIA, PA 19103-2793
Phone Number: 215.994.2183
Fax Number: 215.655.2183

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mr. David J Long Jr.		
Entity	Individual	Citizenship	UNITED STATES
Address	2050 Delsea Drive Sewell, NJ 08080 UNITED STATES		

Correspondence information	Mr. David J Long Jr. Sole Proprietor TASTE OF SOUTH JERSEY 2050 Delsea Drive Sewell, NJ 08080 UNITED STATES pr@foodpresswire.com, editor@homeandtowne.com Phone:856 232-2299
-----------------------------------	--

Registration Subject to Cancellation

Registration No	2969604	Registration date	07/19/2005
Registrant	REVIEW PUBLISHING LIMITED PARTNERSHIP 1500 Sansom Street, 3rd Floor Philadelphia, PA 19102 UNITED STATES		

Goods/Services Subject to Cancellation

Class 016. First Use: 2004/05/13 First Use In Commerce: 2004/05/13 All goods and services in the class are cancelled, namely: Periodicals in the field of restaurants and dining

Grounds for Cancellation

Other	Unfair business practices, passing off, misrepresentation, first use in commerce, similarity (I first published TASTE OF SOUTH JERSEY in January 2000 as a periodical in the field of restaurants and dining). I have never dissolved my trade name of TASTE OF SOUTH JERSEY. And the registered mark is a dilution to my business reputation. The registrant of the mark is a competitor in my marketplace.
-------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/david j long jr./
Name	Mr. David J Long Jr.
Date	03/18/2008

Exhibit C

Bertin, Erik

From: FOOD PRESS WIRE [pr@foodpresswire.com]
Sent: Wednesday, March 19, 2008 9:16 AM
To: lsteiner@acweekly.com
Cc: jstokes@reviewpublishing.com; aclifton@reviewpublishing.com; Gundersen, Glenn; gmonte@reviewpublishing.com
Subject: Fw: USPTO Cancellation No. 92049029

----- Original Message -----

From: ESTTA@USPTO.GOV
To: pr@foodpresswire.com ; editor@homeandtowne.com
Sent: Tuesday, March 18, 2008 8:38 PM
Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored.

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

2050 Delsea Drive,
Sewell, NJ 08080

Mailed: March 18, 2008

Cancellation No. 92049029
Registration No. 2969604

Mr. David J Long Jr.

Mr. David J. Long, Jr.

v.

Review Publishing Limited Partnership

Review Publishing Limited Partnership

1500 Sansom Street, 3rd Floor,
Philadelphia, PA 19102

Veronica P. White, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system: <http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days

5/12/2008

of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

SEE TTABVUE FOR IMAGE (<http://ttabvue.uspto.gov>)

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party,

provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. See Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at <http://ttabvue.uspto.gov/ttabvue/>. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. See Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. See TBMP 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. See TBMP 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA).

Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at <http://estfa.uspto.gov>.

Exhibit D

[Home](#) | [Help](#)[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 7007 1490 0004 8506 4267

Detailed Results:

- Delivered, May 01, 2008, 9:35 am, PLEASANTVILLE, NJ 08232
- Acceptance, April 30, 2008, 1:24 pm, WOODBURY, NJ 08096

[< Back](#)[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)[Site Map](#)[Contact Us](#)[Forms](#)[Gov't Services](#)[Jobs](#)[Privacy Policy](#)[Terms of Use](#)[National & Premier Accounts](#)

Copyright© 1999-2007 USPS. All Rights Reserved.

No FEAR Act EEO Data

FOIA

EEO & LEP
Information for UsersAccessibility
Information

[Home](#) | [Help](#)[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 7006 0810 0005 3405 9705

Detailed Results:

- Delivered, April 28, 2008, 11:54 am, PHILADELPHIA, PA 19102
- Arrival at Unit, April 28, 2008, 2:14 am, PHILADELPHIA, PA 19104
- Acceptance, April 25, 2008, 4:28 pm, SEWELL, NJ 08080

[< Back](#)[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)[Site Map](#)[Contact Us](#)[Forms](#)[Gov't Services](#)[Jobs](#)[Privacy Policy](#)[Terms of Use](#)[National & Premier Accounts](#)

Copyright© 1999-2007 USPS. All Rights Reserved.

No FEAR Act EEO Data

FOIA

Equal Opportunity
Notice of NondiscriminationInspection
Investigation

[Home](#) | [Help](#)[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 7006 0810 0005 3405 9729

Detailed Results:

- Delivered, April 28, 2008, 11:51 am, PHILADELPHIA, PA 19102
- Acceptance, April 25, 2008, 4:27 pm, SEWELL, NJ 08080

[< Back](#)[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)[Site Map](#)[Contact Us](#)[Forms](#)[Gov't Services](#)[Jobs](#)[Privacy Policy](#)[Terms of Use](#)[National & Premier Accounts](#)

Copyright© 1999-2007 USPS. All Rights Reserved.

No FEAR Act EEO Data

FOIA

Useful Information
Automatically NotifiedImportant Information
Useful Information